

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

To: The Commission

NATIONAL VIDEO RELAY SERVICE COALITION
REPLY COMMENTS TO FURTHER NOTICE OF PROPOSED RULEMAKING

The National Video Relay Service Coalition (the “Coalition”),¹ by its undersigned counsel, hereby submits its reply to comments submitted in response to the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking (“FNPRM”) released by the Commission on June 30, 2004.²

The majority of commenters, like the Coalition, support requiring Video Relay Service (“VRS”) as a mandatory form of Telecommunications Relay Service (“TRS”), agree that VRS should be required to be offered 7 days a week, 24 hours a day, and support lifting the speed of answer waiver. Several commenters, however, either oppose these requirements or suggest that

¹ The National Video Relay Service Coalition is an *ad hoc* group that includes the following organizations: Telecommunications for the Deaf, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), National Association of the Deaf (“NAD”), The Association for Late Deafened Adults (“ALDA”), the American Association of People with Disabilities (“AAPD”), Deaf and Hard of Hearing in Government (“DHHIG”), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), the Student Body Government of Gallaudet University (“SBG”), and the Registry of Interpreters for the Deaf, Inc. (“RID”).

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, FCC 04-137 (rel. June 30, 2004).

they be implemented at a later time when VRS has more fully developed. For the reasons set forth below, the Coalition urges the Commission to reject these comments.

I. The Commission Should Require VRS as a Mandatory Form of TRS and Require That It Be Provided 24 Hours Per Day/7 Days Per Week.

Sorenson Media, Inc. (“Sorenson”), the California Public Utilities Commission (“CPUC”) and the Iowa Utilities Board (“IUB”) suggest that now is not the time to require VRS as a mandatory form of TRS because of technology limitations,³ a lack of appropriately trained interpreters,⁴ and funding considerations.⁵ Sorenson also opposes requiring that VRS be offered on a 24-hour/7-days per week basis.⁶ Significantly, even those commenters that propose delaying mandatory VRS agree that VRS should be a mandatory service because “no other relay service can match the functional equivalency of a real time conversation.”⁷ Thus, the only issue remaining is resolution of the perceived technological and other issues that these commenters allege exist now. Contrary to the comments filed by these parties, these issues are not reasons to delay or decline to implement mandatory VRS. Rather, they are matters that can be addressed as part of a requirement that VRS be provided as a mandatory TRS service. In addition, any alleged shortage of qualified interpreters, which the Coalition does not agree is the case, will be corrected if the Commission requires mandatory VRS and ensures that it is properly funded.

³ IUB Comments at 3-4. IUB does not specify what these limitations may be.

⁴ Sorenson Comments at 11-12; IUB Comments at 4.

⁵ Sorenson Comments at 8-11, 14; CPUC Comments at 7-12.

⁶ Sorenson Comments at 11-12.

⁷ Sorenson Comments at 14. *See also* CPUC Comments at 12; IUB Comments at 3.

A. The Availability of Interpreters will Increase if VRS is a Mandatory Service.

Those comments that cite a shortage of interpreters as a reason to delay making VRS a mandatory service or limit the hours in which it is available demonstrate a fundamental misunderstanding of how labor markets work, and thus mischaracterize the issue. Any shortage in available interpreters is not reason to delay mandating VRS, but rather is a result of the fact that VRS is not a mandated service. In other words, there is currently a lack of qualified interpreters because there is less demand for their services and less funding available to train them due to the fact that VRS is not a mandatory service.

If these commenters' rationale had been applied in other industries, those industries might never have developed to the extent we know today. For example, if at the time the personal computer first began to be developed the industry concluded that further development would create problems because there would be a shortage of people qualified to repair computers, advances in computer technology may have been delayed or may not have occurred at all. Computer manufacturers would have slowed or stopped production, which would have led to a decrease in demand for computer repairs and, thus, fewer resources to train people to repair computers and less incentive for people to learn those skills. If, on the other hand, as happened, the computer industry continued to design and build more computers, the existence and distribution of those computers created a demand for people qualified to repair them, and that demand spurred the labor growth to meet it. This analogy applies equally to requiring mandatory VRS.

Since the Commission reduced the VRS compensation rate, VRS providers have been unable to hire and train new qualified interpreters to meet the highly specialized skill set required

for VRS services.⁸ If the Commission does not mandate VRS, the availability of funds to train additional interpreters will remain limited and demand for additional interpreters will remain low, as there will be little incentive for people to learn to be interpreters. On the other hand, if VRS is mandated, and the Commission provides appropriate reimbursement to VRS providers to train new interpreters, VRS providers will be able to afford training, and the demand for new interpreters will encourage people to enter that field of employment. In other words, mandatory VRS that is required to be provided 24 hours per day, 7 days per week will create the market for VRS interpreters and any shortages existing now will be eliminated.

For these same reasons, Sorenson's opposition to mandating 24/7 VRS availability should also be rejected. If VRS is made a mandatory form of TRS service and VRS providers are appropriately compensated, the growing demand for VRS will lead to a similar growth in demand for interpreters, which will, in turn, as incentives and opportunities increase, spur an increase in the number of people seeking to become interpreters.

Indeed, as Sorenson noted, "[t]here are seven VRS providers competing to hire as many of the certified interpreters as possible."⁹ As in any industry where the demand for qualified personnel is great, companies will offer greater incentives (*e.g.*, compensation, benefits, training, etc.) in order to attract those highly-skilled employees. This competition for qualified interpreters will draw more individuals to that profession and, in turn, increase the pool of available interpreters. In order for this to work properly, however, the Commission must ensure that VRS providers receive a level of compensation for VRS that will enable them to provide the increased incentives necessary to attract more interpreters.

⁸ Sorenson Media, Inc. Petition for Reconsideration of the *Bureau 2003 Reimbursement Order*, July 30, 2003, at 3.

⁹ Sorenson Comments at 8.

Moreover, in order to achieve true functional equivalency, VRS must be readily available on-demand and must provide the ability for people who are deaf or hard of hearing and their contacts to communicate spontaneously and accurately. A hearing telephone user can pick up his or her telephone at any time of the day or night, dial a number and expect to reach the number called. VRS must provide this same level of availability. VRS cannot be functionally equivalent, as required by the Americans with Disabilities Act (“ADA”),¹⁰ if VRS users can only access the service on Monday through Friday or only during the hours of 8:00 am to 5:00 pm. Functionally equivalency demands more than that.

B. The Commission Must Eliminate the Speed of Answer Waiver.

Sorenson asserts that the Commission must maintain the speed of answer waiver and, at a minimum extend it another five years to enable VRS to become more prevalent and enable VRS providers to implement the steps necessary to reduce answer time.¹¹ Section 401 of Title IV of the ADA, which was codified in Section 225 of the Communications Act of 1934, as amended (the “Act”),¹² requires that TRS be offered and that TRS services be functionally equivalent to voice telephone services.¹³ As Sorenson noted in its Comments, VRS is the form of TRS that comes closest to functional equivalency.¹⁴ However, as long as a speed of answer waiver is in place, functional equivalency will be unattainable.

¹⁰ 47 U.S.C. § 225(a)(3). The ADA is discussed below in subsection B.

¹¹ Sorenson Comments at 11.

¹² 47 U.S.C. § 225.

¹³ *Id.* at 225(a)(3).

¹⁴ Sorenson Comments at 14.

Although it may have made sense to waive the speed of answer requirement for a fledgling service so that VRS could be established, there is little justification to continue to waive the requirement for a popular service where the waiver results in substandard quality of service. Indeed, for the same reasons described in subsection A above, many of the issues that led to a need for the waiver in the first place, can be eliminated by requiring that VRS be provided as a mandatory form of TRS.

Since the VRS rate reductions have been instituted,¹⁵ the Coalition members and their constituents have seen a severe reduction in the quality and availability of service. These reductions have already had detrimental effects on the consumers and businesses that rely on this service. In particular, the reductions have curtailed the ability of people who are deaf or hard of hearing and their contacts to take advantage of the opportunities and benefits afforded by equal access to the telecommunications revolution.

Prior to the rate reductions, consumers expected VRS services to be available on demand, in much the same way that voice telephone consumers expect to be able to pick up the telephone and be able to communicate instantly with other voice telephone consumers. In order to achieve close to functional equivalency, VRS providers were answering VRS calls at the same speed as traditional TRS calls. Unfortunately, because of reductions in the VRS reimbursement rate, consumers often experience lengthy answer time delays,¹⁶ with wait times as long as 20-30

¹⁵ *Telecommunications Relay Services*, Order, CC Docket 98-67, DA 03-2111, released June 30, 2003 (“*Bureau 2003 Reimbursement Order*”); *Telecommunications Relay Services*, Order, CC Docket No. 98-67, DA 04-1999, released June 30, 2004 (“*Bureau 2004 Reimbursement Order*”).

¹⁶ *See, e.g.*, Hands On Video Relay Services, Inc., Comments on Payment Formula and Fund Size Estimate for the Interstate TRS Fund for 2004-05; Request for Full Commission Action; and Request for Designation of Evidentiary Hearing, May 24, 2004, at 9-11 (“HOVRS Comments”); Communication Service for the Deaf, Inc., Comments of CSD on Payment Formula and Fund Size Estimate Interstate TRS Fund for July 2004 through June 2005, May 19,

minutes.¹⁷

To achieve functional equivalency, VRS must be readily available on-demand and must provide the ability for people who are deaf or hard of hearing and their contacts to communicate spontaneously and accurately. Because voice telephone users ordinarily obtain instant dial tone, VRS providers must answer 85 percent of all VRS calls within 10 seconds as required by Section 64.604(b)(2) of the Commission's rules,¹⁸ or VRS will not be functionally equivalent. Since the record in this proceeding does not show any technical impediment to meeting the speed of answer requirement, it is simply unfair to VRS users and a violation of the functional equivalency requirement of the ADA to make VRS users wait 20 to 30 minutes to place a VRS call, when voice telephone users can place a call in a matter of seconds. Therefore, the speed of answer waiver must be terminated.

II. The Commission Should Fund VRS from the Interstate TRS Fund.

Many of the comments support funding VRS and other Internet-based TRS services from the interstate TRS Fund until the Commission fully addresses Voice over Internet Protocol ("VoIP") issues. Given the Commission's recent determination that VoIP is an interstate service,¹⁹ it is logical to require that VRS be funded from the Interstate TRS Fund until circumstances demonstrate the need for a different funding structure.

2004, at 9 ("CSD Comments"); Sprint Corporation, Petition for Reconsideration, July 30, 2003, at 17 (Sprint Reconsideration").

¹⁷ HOVRS Comments at 3, 9-11.

¹⁸ 47 C.R.R. § 64.604(b)(2).

¹⁹ *Vonage Holdings Corporation*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, released November 12, 2004.

III. Conclusion

For the reasons stated herein and in the National Video Relay Service Coalition's Comments, the Coalition respectfully requests that the Commission require VRS as a mandatory form of TRS that must be offered on a 24-hour-per-day 7-days-per-week basis without any speed of answer waivers, and require all the features and provide the cost reimbursement that would make VRS a functionally equivalent telecommunications service.

Respectfully submitted,

/S/

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